but compromising in character and is not consistent with a person who was so dissatisfied with the work, one who is so 'fussy' according to her own evidence, and one who had complained so vehemently on numerous occasions about the unsatisfactory work that was being carried out. What is even more incredible is the fact that despite her so-called numerous complaints, invoices for new works continued to be issued by the plaintiffs and confirmation orders continued to be signed by the defendants and they stretched over a period of about one year. I did not believe her evidence and rejected it.

The criteria in this case is: The plaintiffs had performed the work in accordance with the invoices and confirmation orders as set out in the claim and as such they are entitled to payment. It was held in *Hoenig* v. *Isaacs*[1] that

"In an action on a contract for work and labour and articles supplied for a lump sum payable on completion the defendant cannot repudiate liability on the ground that the work, though substantially performed, is in some respect not in accordance with the contract, and, therefore, the defendant was liable for the balance sued for, less a deduction based on the costs of making good the defects or omissions proved."

And at page 180, Lord Denning L.J. had this to say: —

"When a contract provides for a specific sum to be paid on completion of specified work, the courts lean against a construction of the contract which would deprive the contractor of any payment at all simply because there are some defects or omissions. The promise to complete the work is therefore construed as a term of the contract, but not as a condition. It is not every breach of that term which absolves the employers from his promise to pay the price, but only a breach which goes to the root of the contract, such as an abandonment of the work when it is only half done. Unless the breach goes go to the root of the matter, the employer cannot resist payment of the price. He must pay it and bring a cross-claim for the defects and omissions, or alternatively, set them up in diminution of the price."

In this case, the methods of payment were clearly embodied in the invoices and confirmation orders but as the plaintiff had said in evidence that since he and the 1st defendant, John Gouw, were friends being members of the Rotary Club, he was not very rigid in enforcing payment.

The remedy for the defendants if as they alleged the work was not performed according to the specifications, or that part of the work was not done, or that materials supplied were defective and that generally the work was badly done, is to bring a cross-claim for the defects and omissions in a proper manner with supporting evidence, or, alternatively set them up in diminution of the price. The onus is upon them to show that such was the case but from the evidence before me I find that the defendants have failed to discharge that onus except in presenting odd receipts of payments and advances in respect of work which the defendants claimed to have been done by third parties and which they alleged the plaintiffs did not do without bringing in evidence. However, there was only one witness Roland Khoo (DW3) who claimed to have done the aluminium works for the defendants at their request. It should be borne in mind that this aluminium works had already been contracted for by the defendants with the plaintiffs — see AB6 and which the plaintiffs claimed to have been done. Be that as it may, the evidence of DW3 under cross-examination, left much to be desired. He is not a truthful witness and I rejected his evidence. Insofar as the claim concerning the lost items is concerned, I also did not believe the defendants' version. There was not an iota of evidence before the court to show that the said goods were itemised and signed by the plaintiffs as custodian on their behalf: to suggest at this late hour that "certain items", without specifying the number and the nature of the goods, were lost as a result of the plaintiffs' negligence is not only untenable but unfounded in view of the fact that there was no complaint whatever during the time in question from Mrs. Gouw who was present daily at the site and during her absence her cousin Mr. Quek stayed in the premises. I also rejected this counterclaim.

For all these reasons and from the evidence before me, I find as of fact that the plaintiffs had substantially performed their part of the work which they contracted for and they are entitled to payment of the whole sum due and as such there will be judgment for the plaintiffs for the amount claimed with costs. The counterclaim is dismissed with costs.

Claim allowed.

Counterclaim dismissed.

Solicitors: *Chor Pee & Co.; Chan, Goh & Co.*

HOOI CHENG KWONG & ANOR. v. PAUL HOOI

[O.C.J. (Choor Singh J.) November 8, 1980]

[Singapore — Suit No. 2610 of 1978]

Gift — Undue influence — Special relationship of mother and son — Same counsel for both donor and donee — Whether independent legal advice essential to rebut presumption of undue influence.

The present action was commenced by Ng Swee Kee, the mother of the defendant. She claimed that she was induced to make over certain shares to the defendant by his undue influence; that the transfer of the said shares was null and void and that she was entitled to a retransfer and delivery of the said shares. She also claimed an account of all dealings by the defendant with the said shares and payment of the amount to be due on the taking of such account.

The pleadings alleged that the defendant and his wife virtually kept the defendant's mother a prisoner, refusing her access to the outside world and at a later stage, her solicitor assisted the defendant in procuring the shares.

Before the hearing of the case could be completed, Ng Swee Kee died. The present proceedings were thereafter continued between the plaintiffs, Executors named in the Will of the deceased and the defendant.

Held: (1) where the relationship between the donor and donee has at or shortly before the execution of the gift been such as to raise a presumption that the donee had influence over the donor, the court will set aside the voluntary gift unless it is proved that in fact the gift was the spontaneous act of the donor acting in circumstances which enabled the donor to exercise an independent will and which justify the court in holding that the gift was the result of a free exercise of the donor's will;

(2) the mere relationship of mother and son and the fact that the two were living together is in itself not sufficient to raise the presumption of undue influence. It "suggests nothing in the way of special influence or control";

(3) if the facts show, as they did in the present case, that while the relationship of mother and son existed, the donor had very good reasons for making the gifts and excluding the other members of the family from the gifts, the court will not assume automatically that the presumption of undue influence arises. In this case there were clearly suf-

ficient circumstances to negative the inference of undue influence;

(4) independent legal advice is not essential to rebut the presumption of undue influence. What is necessary is to establish affirmatively that the gift was the "free and intelligent" act of the donor;

(5) the two gifts to the defendant were the result of the free exercise of the deceased's independent will. The defendant had established affirmatively that the gifts were the "free and intelligent" acts of the deceased.

Cases referred to:-

(1) *Allcard* v. *Skinner* (1887) 36 Ch. D. 145, 183.

(2) *Inche Noriah* v. *Shaik Allie bin Omar* [1929] A.C. 127; 1 M.C. 79.

(3) *Ismail Musajee Mookerdam* v. *Hafiz Boo* (1906) I.L.R. 33 Cal. 773 P.C.

(4) *Powell* v. *Powell* [1900] 1 Ch. D. 243, 246.

(5) *Mt. Farid-un-nisa* v. *Munshi Mukhtar Ahmad & Anor.* A.I.R. 1925 P.C. 204, 209.

(6) *Valluri Ramanamma* v. *Marina Viranna* A.I.R. 1931 P.C. 100.

CIVIL SUIT.

Y.M. Jumabhoy for the plaintiffs.

H.E. Cashin (*Dr. Myint Soe* with him) for the defendant.

Cur. Adv. Vult.

Choor Singh J.: This action was to set aside gifts on the ground that they were obtained by undue influence.

The action was commenced by Ng Swee Kee (widow) the mother of the defendant. She claimed a Declaration that she was induced to make over certain shares to the defendant by his undue influence; that the transfer of the said shares was null and void and that she was entitled to a retransfer and delivery of the said shares. She also claimed an account of all dealings by the defendant with the said shares and payment of the amount found to be due on the taking of such account.

Before the hearing of this case could be completed, Ng Swee Kee died. She died on February 6, 1980. At the date of her death, the deceased and her witnesses had concluded their evidence and the defendant was halfway through his evidence.

By an order of court made on July 7, 1980, it was ordered that the proceedings in this action be continued between Hooi Cheng Kwong and Hui Cheng Keong (the Executors named in the Will of the deceased) and the defendant and that the said Hooi Cheng Kwong and Hui Cheng Keong be added as plaintiffs.

In this judgment, I propose to refer to the original plaintiff, Ng Swee Kee (widow) as "the deceased".

The deceased was the widow of Hooi Yip Beng, a retired banker who died on December 27, 1976. Before the death of her husband, she lived with her husband at 26 Siglap Road, Singapore. She had four sons:

1. Hooi Cheng Loon
2. Michael Hooi Cheng Kwong
3. Paul Hooi Cheng Cheong
4. Philip Hui Cheng Keong

At the material time i.e. in December 1976, the eldest son Hooi Cheng Loon lived with his family in Penang.

The second son Michael Hooi Cheng Kwong lived in Singapore.

The third son Paul Hooi Cheng Cheong who is the defendant in this case lived with his family at 43 Greenwood Avenue, Singapore.

The fourth son Philip Hui Cheng Keong, a bachelor, lived at 26 Siglap Road with the deceased and her husband i.e. his parents. Also living at 26 Siglap Road at that time was Dr. Louise Hooi, the daughter of the deceased's eldest son Hooi Cheng Loon and granddaughter of the deceased.

In December 1976 the deceased's husband Hooi Yip Beng fell ill. His health started to deteriorate and he was admitted to the Singapore General Hospital for an operation. The deceased's three sons, Michael, Paul and Philip and her granddaughter Dr. Louise representing the eldest son Hooi Cheng Loon who was in Penang, decided to approach the deceased to have her consent to withdraw monies from two accounts (1) a joint account of the deceased and her husband in the Post Office Savings Bank, and (2) deceased's personal account with the Post Office Savings Bank and to place the amounts withdrawn from these two accounts in a new account with Malayan Banking Berhad which account was to be operated by any three of them. The deceased agreed to this and according to her, even her husband agreed to it. The proposal was accordingly carried out. A sum of $365,000 was withdrawn from the said joint account and $150,000 from the deceased's personal account with the Post Office Savings Bank and the total sum of $515,000 was placed in an account with Malayan Banking Berhad, Siglap Branch. A document was signed by the four signatories to this new account which sets out their agreement:

"22nd December 1976.

We, the undersigned agree the following emergency action to be taken:

1. In view of mother's/grandmother's poor health, we shall not let her know of father's/grandfather's operation. All of us agree to share the blame if this arises. Louise Hooi will write to tell her father of our intention.
2. We agree to transfer all the money except a small sum to keep the account open from the Post Office Savings Bank Joint Account of Mr. & Mrs. Hooi Yip Beng (Hooi Yip Beng and Ng Swee Kee) to the joint account of same with Malayan Banking Bhd. Siglap Branch.
3. We agree to request Hooi Cheng Keong to obtain mother's/grandmother's signature to effect the above transfer and that we all will share the responsibility of the action as stated under item '2' above.
4. We also request Hooi Cheng Keong to get mother's/grandmother's signature for a blank cheque with the joint account with Malayan Bank.
5. If the operation is not successful, we appoint Keong to effect transfer of all the balance in the joint account with Malayan Bank into a joint account under the names of the undersigned to hold in trust for mother/grandmother. Any three signatories of the four signatories are required for the new joint account and the undersigned are the signatories for the new account.

We agree to be responsible fully for the above action.

Sgd. Hooi Cheng Kwong
Sgd. Hui Cheng Keong
Sgd. Hooi Cheng Cheong
Sgd. Louise"

The deceased's husband Hooi Yip Beng died on December 27, 1976. There was a family gathering on January 4 or 5, 1977 when Hooi Yip Beng's Will and a Codicil were read out by his eldest son Cheng Loon to the members of the family. Paul's and Philip's shares in the estate of their father had been reduced by the Codicil from 3/20th to 1/20th. Paul was a bit disappointed but he accepted the reduction because his father had already given him $180,000 in his lifetime to enable him to set up his practice as a public accountant. Philip's share had been reduced because he had been given the property at 26 Siglap Road. According to Paul it was quite a rowdy meeting at which a lot of noise was made by everyone present. All sorts of allegations and counter allegations were made by all the four brothers who were quarrelling with each other, but strangely enough the quarrels were not about the contents of the Will. Eventually the meeting broke up and all went home. For the purposes of this case it is not necessary to decide what was said or not said at this meeting.

Shortly after her husband's death, the deceased requested that the amounts withdrawn from the two accounts with the Post Office Savings Bank and which were paid into the new account with Malayan Banking Berhad be returned to her. Paul and Philip signed a cheque for $500,000 drawn on this account with Malayan Banking Berhad. Dr. Louise refused to sign it and moved out of 26 Siglap Road. This was at the end of January 1977. Michael also was not co-operating. He was evading his mother because he had no desire to sign the cheque in question. Cheng Loon, his daughter Louise who took instructions from him and her uncle Michael were clearly in conspiracy. They knew very well that the whole sum of about $500,000 which was lying in the account with Malayan Banking Berhad belonged to the deceased. After her husband's death, she as survivor, became entitled to the whole sum withdrawn from the joint account with the Post Office Savings Bank and the remainder of the monies in the account with Malayan Banking Berhad represented her money drawn from her personal account with the Post Office Savings Bank. But Cheng Loon and Michael were hoping that the $500,000 in Malayan Banking Berhad would fall back into the estate of their father in which case they stood to benefit because they would get a substantial portion of it under their father's Will. On the other hand if the money went back to their mother she may or may not give them anything out of it in her Will.

On February 11, 1977 the deceased left 26 Siglap Road and went to stay with the defendant at his house at No. 42 Greenwood Avenue. Philip also went along with her to stay with the defendant. A cook and two servants also moved in at 42 Greenwood Avenue.

In February 1977, the deceased sought legal advice to recover the $500,000 lying in the account with Malayan Banking Berhad. Her first solicitor was Mrs. Hui of Wee Swee Teow & Co. Sometime in March 1977 Mrs. Hui went to China on a visit and her partner Mr. Giam took over the matter. The deceased was very worried and impatient over the inaction of Mr. Giam and she requested the defendant to find another solicitor. The defendant recommended Mr. Wu of Donaldson & Burkinshaw. The deceased agreed to Mr. Wu acting for her. Mr. Wu interviewed the deceased and took instructions. He wrote to the solicitor acting for Michael and Dr. Louise demanding the return of $514,569.66 then standing to the credit of the account in Malayan Banking Berhad. A sum of $10,397.16 had been withdrawn from this account to meet the funeral expenses upon the death of Hooi Yip Beng. It was only when Mr. Wu threatened to issue a writ that the money was refunded. This was on March 25, 1977. A sum of $150,760 was paid back into the deceased's savings account with the Post Office Savings Bank and $353,412.50 was deposited in the joint Post Office Savings Bank account. The Pass Book of the joint account was handed to the Hong Kong & Shanghai Bank (Singapore) Trustees Ltd. who were the trustees of the estate of Hooi Yip Beng deceased.

On April 11, 1977 the deceased moved out of the defendant's house at 42 Greenwood Avenue and went to stay at 26 Siglap Road. Philip and the deceased's servants also moved to 26 Siglap Road. But before moving out of the defendant's house, the deceased told the defendant that she wanted to give him and Philip her shares in Yip Beng (Pte) Ltd. and Yip Beng (H.K.) Ltd. two investment companies founded by her late husband Hooi Yip Beng. The deceased requested the defendant to consult Mr. Wu about this matter. The defendant did so and was advised by Mr. Wu that it was desirable that the deceased be examined by a psychiatrist before any such gifts were made. Accordingly arrangements were made for the deceased to be examined by Dr. Paul Ngui a consultant psychiatrist who examined her and certified in his report that she was of sound mind.

On April 13, 1977 Mr. Wu visited the deceased at 26 Siglap Road in order to return to her the Pass Book of her personal account with the Post Office Savings Bank. At this meeting, Philip, the defendant and his wife Pauline were also present. Wu reported to the deceased that her money had been recovered and re-deposited in her account with the Post Office Savings Bank and handed her the Pass Book. Mr. Wu pointed out to her the amount in the Pass Book. He also told her that the Joint Account Pass Book was with the trustees. The deceased was very happy. Mr. Wu also explained to her Dr. Paul Ngui's report. Philip then produced to Mr. Wu typewritten acknowledgments of gifts of shares in Yip Beng (Pte) Ltd. and Yip Beng (H.K.) Ltd. and Share Transfer Deeds. These were produced in the presence of the deceased. Philip explained that his mother would like to make a gift of the shares stated in the documents to him and Paul. Mr. Wu says that he did not expect this development as he was not forewarned and so he read the documents. The documents related to a gift of all the deceased's shares in both Yip Beng (Pte) Ltd. and Yip Beng (H.K.) Ltd. to Paul and Philip in equal parts. Mr. Wu's evidence as to the advice he gave is as follows:

"...I spoke to her on a general basis about her intention to make a gift of all her shares in the S'pore and H.K. companies to Paul and Philip in equal parts. She confirmed that that was her intention and she explained that she was getting very old and it was her wish to give these shares to

her two sons. I then emphasised to her that once she made these gifts all that was left in the two companies would be her inheritance from her husband's estate. She would have no shares registered in her personal name. I made no reference to the fact that she had money in the savings account although I had that in mind. So once she heard me explaining that she was in fact giving away all her registered shares in the two companies she started having reservations. She then told me that she had decided to give her shares in the S'pore company to Paul and Philip equally but would like to give further thought to giving those shares in the H.K. Co. I told her that was very wise because her share of the estate duty on her husband's estate was still outstanding. I pointed this out to her. Once she made up her mind on what she wanted to do, I told her that I could not sign the documents before me as a witness because she had already signed them in my absence. I told her that I would have the documents for the S'pore shares retyped at my office and then present them for her signature in my presence. She agreed to this. After this we had a friendly conversation. She talked about the Siglap house; that originally it was her house and that she had given it to Philip. She asked me if it was true that the gift of the house would not be valid for five years. I explained to her that the only matter relevant to the five years period was the payment of estate duty. She appeared to understand this. Then we talked about our family and she was pleasantly surprised that our families came from the same part of Canton province. Then I left. I took with me the gift documents that had already been signed...."

Mr. Wu's evidence is that when he returned to his office, he handed the documents he brought back from 26 Siglap Road to his secretary with instructions to destroy them in the shredding machine after a fresh set had been prepared. And Mr. Wu's secretary, Rosa Tang Tek Teo has confirmed that she typed out a fresh set of documents and shredded the first lot by putting them in the shredding machine. Rosa Tang stated that the documents she shredded were not signed. Here, she is clearly in error. It would appear to be a lapse of memory.

On April 14, 1977 Mr. Wu returned to 26 Siglap Road to see the deceased. He brought with him Share Transfer Forms and acknowledgments in respect of the transfer of shares in Yip Beng (Pte) Ltd. Philip was not in the house. Mr. Wu explained the documents to the deceased. They spoke for about 20 minutes. Mr. Wu's evidence on this meeting is as follows:

"....When we arrived there, Philip was not in. After the usual greetings and the hot drinks, I got down to the business in hand. I explained to the plaintiff the contents of the two acknowledgments of gift in Cantonese and asked if she would confirm to me that the contents accurately reflected her wish. After she had confirmed that the contents did, I pointed out where she should place her signature. She signed. Each time she apologised in advance for her shaky signature and explained that she did not have much opportunity to sign her name. And each time she made one or two trial signatures on a blank piece of paper before signing on the dotted line. This is my recollection. There was no need for Philip's presence and I did not remark about his absence. It is not true that Philip was present."

The deceased moved from 26 Siglap Road to 7A Lantana Avenue on May 3, 1977. This was a new residence purchased by Philip with funds provided by the deceased. The defendant and his wife Pauline together with their son Edwin visited the deceased at Lantana Avenue on May 4, 1977 and continued to visit her regularly thereafter. On or about May 10, 1977 the deceased told the defendant that she had made up her mind already to give him and Philip the shares in Yip Beng (H.K.) Ltd. She told him this at 7A Lantana Avenue. The defendant's evidence is that when she told this to him, he asked her, "Are you sure you have enough money?" and she replied, "I think I have enough money". The defendant says that he then got in touch with Mr. Wu and informed him that his mother had made up her mind now and that she wanted to give the Hong Kong shares to him and Philip. An appointment was made for Mr. Wu to see the deceased at 7A Lantana Avenue on May 12, 1977. Mr. Wu's evidence of what transpired on this occasion is as follows:

"...I went with Paul to Lantana Ave. Philip was present there. It is a semi-detached house. I exchanged the usual greetings with the plaintiff. She explained that she had bought the house for Philip. We all sat at the dining table. I asked if it was true that she had now decided to make a gift of the H.K. shares to Paul and Philip in equal parts. She confirmed that she had decided to make these further gifts. Then the Acknowledgment and Transfer Deeds were produced — either by Philip or Paul — I can't remember — and I explained the documents to her as I did previously at Siglap Road. I translated to her word by word the acknowledgments both at Siglap Road and at Lantana Avenue but not the Transfer Deeds. I told her the nature of the Transfer Deeds — that they were the transfer documents for the transfer of the shares. She confirmed that the contents of the documents accurately represented her intention. I requested her to sign the documents at the appropriate places and I witnessed her signature. There is one aspect of our conversation I missed out. When I sought her confirmation as to whether she had now decided to make a gift of the H.K. shares, she asked me whether these H.K. shares would include her inheritance from her husband's estate in the two companies, I assured her that that inheritance would not be affected. When she was on this subject, I remember her asking me how much she was worth, discounting the H.K. shares she was about to give away. I made a quick calculation — I had the estimated figure at that time — and I think I checked my estimate with Paul — it was about $800,000. It was just a mental estimate. Nothing was written down. Paul confirmed my estimate and I told the plaintiff the figure of $800,000. It was after this that she confirmed to me her decision to give her H.K. shares to Paul and Philip in equal parts. Then there was another document relating to O.C.B.C. shares — an acknowledgment of a gift of O.C.B.C. shares to Philip. She explained to me that the gift of these shares had been made by her some time ago but she wanted to formalise the gift by signing an acknowledgment. She asked me if she could do this. I told her that this would be quite in order and I went through the process of explaining to her the acknowledgment of the O.C.B.C. shares, obtained her confirmation that the contents were correct and then took her signature on the document which I witnessed. This was another happy meeting.

It was Paul or Philip who produced all the documents on this occasion. They did not come from my office.

Plaintiff did not appear to be frightened. There was no reason for her to be afraid. She did not show any reluctance. If she showed the slightest hint of reluctance I certainly would have wanted to clear up the reason for her reluctance before obtaining her signature on the documents. In each of these instances when I witnessed her signing of these gift documents, I made a special effort to ensure that each transaction was properly executed in every respect and that every gift reflected the plaintiff's personal intention, as I fully expected that Michael and Cheng Loon might after her death decide to challenge these gifts bearing in mind the strains that existed amongst the brothers. What I never expected was that the plaintiff herself would repudiate these gifts. That I never expected...."

The Transfer Forms, the Acknowledgment of Gift and the Share Certificates were sent to Hong Kong to the Secretary of Yip Beng (H.K.) Ltd. No resolution was passed approving the transfer of the shares and the documents were too late for stamping in Hong Kong without the payment of a penalty. It was therefore decided to have new documents executed by the de-

ceased. This was done on September 22, 1977. Mr. Wu called at 7A Lantana Avenue and his evidence relating to this visit is as follows:

"...This visit was simply to sign replacement documents. After the usual greetings and hot drinks I got down to explaining to the plaintiff the purpose of my visit. Told her that the previous set of gift documents had to be sent for stamping and for some reason they were not stamped within the prescribed time and would attract a penalty if used. I explained that in order to avoid a penalty, Paul has suggested that a new set of documents should be signed. She showed no sign of changing her mind. She accepted my explanation and agreed to sign the replacement documents once she was satisfied by me that these new documents related to the same H.K. shares. This was again a happy meeting and the translation and signing process was identical. There was one difference about this meeting and it was simply that the documents had to be typed in the house. Philip brought out a typewriter and started typing. He was not very proficient. It took a while for the documents to be prepared. That explains the length of the meeting. The attendance note mentions two hours...."

It is the transfer of 60,400 shares in Yip Beng (Pte) Ltd. by the deceased to the defendant on April 14, 1977 and the transfer of 194,978 shares in Yip Beng (H.K.) Ltd. on September 22, 1977 which are the subject-matter of these proceedings. It is contended on behalf of the plaintiffs that the said transfers are null and void. Two types of undue influence are relied upon. First, the issue of coercion and gross pressure is raised. The second ground relied on is that of undue influence by reason of the relationship of mother and son.

On the issue of coercion and pressure, it is alleged in the statement of claim that at the material time, the deceased was 82 years of age; that she had no other companion with her and she stayed in the defendant's home except the defendant, his wife and her son Philip; that she remained there practically in seclusion; that she was not permitted to see anyone without the defendant or his wife being present and that she was not allowed to make or receive any telephone calls.

Next, it is alleged that in the circumstances stated in the preceding paragraph, the defendant by virtue of his relationship with the deceased and by reason of the influence exerted on her by Mr. Wu, acquired dominion over the mind of the deceased.

The statement of claim goes on to allege that the deceased was induced to sign the transfer deeds and the acknowledgments of the gifts by the undue influence of the defendant and Mr. Wu and under their direction and pursuant to the faith, trust and confidence she reposed in them but without any separate or independent advice and without due consideration of the reasons for or the effect of what she was doing.

Putting it bluntly, the effect of the pleadings is that the defendant and his wife virtually kept the deceased a prisoner, refusing her access to the outside world and at a later stage, Mr. Wu as her solicitor, assisted the defendant in procuring the shares.

The evidence relied on is that of the deceased and of her son Philip. Deceased stated in her evidence:

"I was unhappy. I was sort of kept in a cage. I had no opportunity to meet my children and relatives. My life was miserable. This was in Paul's house. It was in his house that I felt miserable.

Paul's wife would not allow my other children to see me i.e. Cheng Loon and Michael and also a female who calls me auntie.

I moved to Paul's house at the suggestion of Paul's wife.

I was also not allowed to see my granddaughter Louise Hooi. She is a doctor. I did want to see my sons and granddaughter. I also wanted to see my sister-in-law Mrs. Hooi.

In Paul's house they (Paul and Pauline) pleaded me to transfer my Singapore assets to Paul and Philip.

Wu pleaded with me to give my shares to both Philip and Paul. I was shown a stack of documents which appeared to be shares. Only Paul, his wife and Philip were present with Mr. Wu and myself. This took place in Paul's house. I was not prepared to sign the documents Mr. Wu gave me. In fact I cried at that time. Mr. Wu refused to leave the house and I subsequently changed my mind and agreed to sign those documents.

When I was in Paul's house I was not allowed to receive telephone calls. I did not make telephone calls. I was unable to make telephone calls because I could not reach the telephone which was barricaded with some furniture.

I moved out of Paul's house because I had undergone a lot of hardship while staying in Paul's house.

I have in all signed transfers of shares on two occasions. On the second occasion I did not know what shares I was signing away. On this second occasion in Paul's house when I signed, the persons present were Mr. Wu, Paul, his wife and Philip.

After I moved into Philip's house, Paul and his wife visited me once and on that occasion I signed the papers in connection with the transfer of my Hong Kong shares. On this occasion the persons present were Paul, his wife and Philip. Mr. Wu was also present. I was not told what I was signing away. Mr. Wu asked me to sign. Mr. Wu told me that I still had in my possession a substantial amount of floating money and that I would never be able to finish it. I did not know how much money I had. If I refused to sign he would not leave the place. At first I refused to sign and cried. He would not go away. After some forty-five minutes I agreed to sign."

The evidence of Philip on which reliance is placed is this:

"Every morning Paul and Pauline would tell my mother to give her shares to Paul and myself. I was present. I heard this. Our request to my mother to transfer her shares to me and Paul went on practically every morning while we were staying in Paul's house. I also took part in the said request.

When Mr. Wu came to Paul's house on April 14, 1977 I was present. Wu sat at a table with my mother, Paul and I. Wu took out documents. There were two Declaration of Gifts and two Transfer Forms. Wu read out the number of shares — 60,400 in Yip Beng (Pte) Ltd. and he asked my mother in Cantonese, 'Are you going to give away these shares to Paul and Philip i.e. $60,400 to each?' My mother did not answer immediately. She put on a long face which showed that she was not happy. Pauline was also there. Paul was holding a pen and a piece of paper. He was scribbling and doing some calculation on that piece of paper and pushed the paper over to Wu and said, 'That is enough for her.' My mother was unhappy and tears came out of her eyes. Wu said in Cantonese, 'You still have ample sum of money inherited from your husband.' My mother replied, 'I am afraid that my two sons will lose their filial piety' and that she would have no means to live on. Wu said, 'If you need any money you can tell either of your sons. He will get it for you.' At this time my mother was weeping. Tears were dropping from her eyes and she did not know what to do. C.S. Wu kept on saying, 'Give the Singapore shares to Philip and Paul. You have enough to live on.' Eventually about 20 minutes later my mother signed the documents. They are at A.B.38, 39, 40 and 41. I signed A.B.39 after my mother signed. Wu signed last and then he made the note about translation and signed again. Same procedure was followed on A.B.39. Then my mother signed A.B.40 and 41 followed by Wu.

I took the Transfer Forms for stamping on the next day and they were sent to the Secretary for action to be taken...'

I see A.B.42 to A.B.45. These documents were signed by my mother in Paul's house on May 12, 1977 in the presence of Mr. Wu. While my mother was in Paul's house on this second occasion, she did not see her two other sons. She did not receive any phone calls. It was impossible for her to make a phone call. She could hardly walk. She was always in a wheel chair. The phone was always fenced off by two chairs and she could not reach it from her wheelchair. She required someone to push her wheelchair. She could not move the wheelchair on her own because she did not know how to do it. Furthermore she was too weak to do it.

I knew two days earlier that Wu was going to witness these four documents. Paul told me. My mother did not know that Wu was coming. She was not told. The same thing happened on May 12. We came with the Documents A.B.42 to A.B.45. He read out the number of shares to my mother and asked her if she wanted to give the shares to me and Paul. My mother said, 'I don't want to give them away.' Wu said, 'Paul has already calculated for you that you have enough money to spend even after these shares are given away.' My mother again said the same thing, 'My two sons will lose their filial piety' and she will have no means to live on. Then she also started crying. When she stopped crying Wu put the documents before her and asked her to sign which she did. She signed the Declaration Deed first and then the Transfer Forms. They were then signed by me. Wu then signed the documents and dated them."

As regards the signing of the replacement documents for the transfer of the shares in Yip Beng (H.K.) Ltd. which were signed on September 22, 1977, Philip's version is as follows:

"Wu asked my mother once again, 'Do you want to give your H.K. shares to Paul and Philip?' My mother said, 'I do not want to give them away.' Then Wu said, 'You have already given them away in May'. Then she started crying bitterly and we waited and waited for her to stop. Wu kept on reassuring her that she would still inherit an ample sum of money from her husband. All this lasted for about an hour. Eventually when my mother stopped crying, Wu pushed the documents to her for her signature. He asked her to sign. She signed the two Declaration of Gift first. After the signing, these documents were handed to me and Paul for our signatures. At the same time the two Transfer Forms were given to my mother for her to sign. After this the two documents were returned to Wu. He signed his name on the Declaration of Gift and below that he wrote 'Translated by me to the donor in the Cantonese dialect'. And he signed his name again."

The allegation that the deceased was virtually a prisoner in the defendant's house does not bear examination. The deceased had a day time servant and a night time servant, both of whom used to go home at the end of their stint each day. There was nothing to prevent the deceased from passing messages for help through these long standing retainers if she had so wished. The evidence also is that the defendant and his wife Pauline left the house practically everyday at about 7.00 a.m.; that they would have breakfast at Farrer Road market place where Pauline also did her marketing and that after Paul had gone to work, Pauline would drive home at about 9.00 a.m. The defendant and his wife were therefore away from home for about two hours every morning. This was admitted by Philip. There was nothing to stop the deceased from ringing up for help during those two hours or even from leaving the house altogether with the assistance of her day time servant. Additionally, a physiotherapist came in at least three times a week. She administered to the deceased and it is unbelievable that if the deceased was being kept a prisoner against her will, that she did not complain of this to the physiotherapist and ask her to report the matter to the police in order to effect the deceased's rescue. On Chinese New Year which was celebrated on February 18, 1977, friends and many members of the family visited the defendant's house. They included pastors. And yet to none of them did the deceased complain that she was being kept a prisoner. There is evidence to show that the deceased was driven to 26 Siglap Road at least three or four times a week in the afternoon by Philip when he went to feed the dog which had been left in that house. The deceased also admitted under cross-examination that on most afternoons she went out for a drive with Philip in his car. There is no explanation as to why the deceased could not have instructed Philip not to return to the defendant's house or to drive to the police station and lay a complaint. There were also two special occasions, the lunch party at the Shangri-la Hotel and the visit to the Singapore Island Country Club. On both occasions the deceased sat with her friends and relatives and had ample opportunity to make a complaint about being kept a prisoner.

So far as the allegation of being "kept in a cage" is concerned, that she was not allowed to have visits from her friends and relatives and that she was virtually a prisoner, the evidence does not support these allegations which are completely inconsistent with the rest of the evidence in this case. I reject these allegations as being frivolous and completely without proof. In any case when the deceased transferred the shares in question to the defendant she was not living in his house and could not have been a "prisoner" of the defendant and his wife. The deceased's further allegations of not being allowed to see Michael and Dr. Louise and not being allowed to telephone to them also do not bear examination. There is evidence that almost every morning Michael visited a cake shop which is only three or four doors away from the defendant's house at Greenwood Avenue. Michael's car was seen parked in front of that shop on most mornings. If the deceased wanted to see Michael, there was nothing to stop her from doing so when Paul and his wife Pauline were away for about two hours every morning. Even better than that, there was nothing to stop the deceased from sending her servant to call Michael who was only three doors away. The truth of the matter is that the deceased was angry with Michael and Dr. Louise because they had refused to sign the cheque for the refund to her of $500,000 and that she did not want to see them. The deceased admitted this under cross-examination. She was asked:

Q. But the fact is that you were angry with Michael for not letting you have the money back and you did not want to speak to him?

A. Correct.

On two occasions Michael attempted to see the deceased in order to talk to her. First, on March 31, 1977 Michael and the deceased's sister-in-law called at Paul's house. They stood in front of the gate. Deceased was asked:

Q. So Pauline with the day time servant took you to the main door at the porch?

A. Yes.

Q. And this was only about 10 ft. from the gate which was locked?

A. Yes.
Q. Is it not the fact that on this occasion you did not want to talk to Michael?
A. Correct.
Q. There was another occasion when you had a confrontation with Michael?
A. I can't remember.
Q. You were now living at 26 Siglap Road. The date was April 23, 1977?
A. Yes.
Q. This was the time when Michael climbed over the gate?
A. Yes.
Q. And he started talking to you through the window?
A. Yes.
Q. And Louise was with Michael?
A. Yes.
Q. Once again you did not want to talk to Michael for the same reason?
A. That is right.

The deceased admitted under cross-examination that she had a book containing telephone numbers of all her relatives. She was asked:

Q. So there was no question of you not being able to ring up Michael when Paul and Pauline were not in?
A. Yes.

These allegations that she was not allowed to see Michael and Louise or to telephone to them were clearly not true. The evidence is all the other way. She was angry with them and did not wish to see them or to speak to them.

The deceased's allegation that she was crying when she signed the Transfer Deeds because she was unwilling to do so and was bullied by Mr. Wu and compelled to do so are denied by the defendant but supported by Philip. But then Philip in my opinion was a most untruthful witness. His evidence was nothing but a bundle of lies. He clearly committed perjury on three important issues. First, he stated that on April 13, 1977 he did not produce to Mr. Wu at 26 Siglap Road two sets of Transfer Deed already signed by the deceased. Mr. Wu's evidence that Philip did produce such deeds which he refused to witness because they were already signed is corroborated by the defendant. Mr. Wu's evidence that he brought back those signed deeds to his office is corroborated by his secretary who stated that she destroyed them by putting them in the shredding machine. In my opinion Philip had told a deliberate lie on this issue.

Again, as regards the signing of the Transfer Deeds on April 14, 1977, Philip stated that this took place at the defendant's house at Greenwood Avenue. The evidence of Mr. Wu and that of the defendant and his wife Pauline is that it took place at 26 Siglap Road. Mr. Wu was brought to 26 Siglap Road by the defendant in his car which was driven by his wife Pauline. Mr. Wu's evidence that he was taken to 26 Siglap Road where he witnessed the signing of the Transfer Deeds by the deceased is supported by his attendance note which he dictated to his secretary on the same day after he returned to his office. Here again Philip told a deliberate lie because he was not even present on this occasion. The defendant, his wife Pauline and Mr. Wu all stated that Philip was not present. Mr. Wu's evidence that Philip was not present is again supported by his attendance note which clearly states that Philip was not present.

With regard to the signing of the share Transfer Deeds pertaining to the Hong Kong shares on May 12, 1977, Philip insisted that they were signed by his mother at the defendant's house in Greenwood Avenue. The evidence of the defendant, his wife Pauline and of Mr. Wu is that they were signed at 7A Lantana Avenue. And Mr. Wu's evidence is again supported by his attendance note. In my judgment, Philip was a most untruthful witness and clearly committed perjury by telling deliberate lies on all important issues in order to bolster up his mother's case.

Philip's evidence that his mother was crying on all occasions when she signed the Transfer Deeds because she was unwilling to do so and was bullied by Mr. Wu who compelled her to do so was put to Mr. Wu. His comment was:

"... Philip's version is quite untrue. It is absurd to suggest that I would treat my own client in such fashion. There is no conceivable reason why I should behave in that fashion to my own client. If anything, throughout the time I acted for the plaintiff. I felt very protective towards her because of her advanced years and the fact of course that she had so many problems in the family amongst her own children. Philip was not there at all on April 14....

Philip's version is not true. I have never, on all the occasions that I met plaintiff noticed that she had any serious difficulty in moving about. She was always assisted by her maid by the arm and that was all. I never saw a wheelchair on any of my visits. On one or two occasions when I visited her she even asked to be assisted out to the porch to see me off. Another observation that I wish to make is this. There can be no confusion over the addresses. I visited all these three houses, Greenwood Avenue, Siglap Road and Lantana Avenue on the occasions that I have mentioned in my evidence and my attendance notes confirm my recollection in this regard ...."

It was put to Mr. Wu that persuasion was applied by him and the defendant to have those gifts made. Mr. Wu replied:

"I deny that. And I resent such an allegation being made against me. At that time, there was no conflict of interest amongst my three clients. And I was acting for Madam Ng as well as Paul and Philip. I had no reason whatever to conspire with one or two of my clients to deprive the third of her property."

Against the evidence of the deceased and that of Philip must be weighed the evidence of the defendant, that of his wife Pauline and of Mr. Wu. Defendant's wife Pauline was present on all occasions when Transfer Deeds were signed. After considering the evidence of all five, I had no hesitation in coming to the conclusion that the version of the defendant and his witnesses was the true and correct version; that there was no coercion or domination or pressure put on the deceased to sign the Transfer Deeds; that she signed them of her own free will and that she was not crying as claimed by her and Philip.

I now turn to the second type of undue influence relied upon by the plaintiffs, namely, undue influence by reason of the special relationship of mother and son. The following passage from the judgment of Lindley L.J. in *Allcard* v. *Skinner,*[1] was relied upon:

"... They (the courts) have not shrunk from setting aside gifts made to persons in a position to exercise undue influence over the donors, although there has been no proof

of the actual exercise of such influence; and the courts have done this on the avowed ground of the necessity of going this length in order to protect persons from the exercise of such influence under circumstances which render proof of it impossible. The courts have required proof of its non-exercise, and, failing that proof, have set aside gifts otherwise impeachable. . . ."

The principle to be applied to this issue is to be found in the judgment delivered by Lord Hailsham L.C. in *Inche Noriah* v. *Shaik Allie bin Omar.*[2] It may be stated as follows: where the relationship between the donor and donee has at or shortly before the execution of the gift been such as to raise a presumption that the donee had influence over the donor, the court will set aside the voluntary gift unless it is proved that in fact the gift was the spontaneous act of the donor acting in circumstances which enabled the donor to exercise an independent will and which justify the court in holding that the gift was the result of a free exercise of the donor's will.

In the present case the presumption of this type of undue influence is rebutted by the deceased's own evidence. It was not the deceased's case that she reposed confidence and trust in the defendant who by virtue of that confidence and trust was able to obtain from her the two gifts in question. Her case was of gross oppression; that she was bullied and forced against her will to make those gifts and not at all a case of abuse of confidence. If the defendant was holding the deceased a prisoner, isolating her, browbeating her and using a solicitor to assist him to exert the pressure of his professional standing to force her to sign, how can it be alleged by the plaintiffs that the presumption of undue influence arises by virtue of the special relationship of mother and son i.e. not only by reason of the defendant's close proximity to his mother but presumably by the kindly way in which he had treated her over a period of time. In my opinion the deceased's own evidence negatived this type of undue influence.

The deceased's motives in making the two gifts in question are clear and they also negatived the presumption of undue influence of the second type. The deceased was extremely hostile to two of her sons, namely Cheng Loon and Michael for reasons which are perfectly clear. They were refusing to sign a cheque which would have given back to the deceased the $500,000 which had been garnered from various accounts prior to the death of the deceased's husband. All the brothers and Louise clearly knew that the $500,000 belonged to the deceased and Michael and Louise did not want the money to go back to her for the simple reason that if it fell into the residue of the deceased's husband's estate then Cheng Loon and Michael would get their share of it under the Will of their father. The deceased was so angry with Cheng Loon and Michael at about the time she gifted the Singapore shares to the defendant that she made a Will leaving only one dollar each to Cheng Loon and Michael. One of the reasons for the gifts to the defendant and Philip was clearly the deceased's hostility to her other two sons Cheng Loon and Michael and it is clear that she was deliberately excluding them and that she had very good reasons for so doing.

The evidence also discloses another reason for making the gifts to the defendant and Philip. The deceased desired to level out the imbalance caused by the Will of the deceased's husband who had by a codicil to his Will reduced the defendant's and Philip's share in his estate from 3/20 to 1/20. The deceased was the person most upset on account of this when the Will was read out at the family gathering. She therefore took steps to level out the imbalance by gifting her shares in the two companies to the defendant and Philip.

Furthermore the mere relationship of mother and son and the fact that the two were living together is in itself not sufficient to raise the presumption of undue influence. It "suggests nothing in the way of special influence or control". See the judgment of the Privy Council in *Ismail Musajee Mookerdam* v. *Hafiz Boo.*[3] If the facts show, as they do in this case, that while the special relationship of mother and son existed, the donor had very good reasons for making the gifts and excluding the other members of the family from the gifts, the court will not assume automatically that the presumption of undue influence arises. In this case there are clearly sufficient circumstances to negative the inference of undue influence.

The evidence of Mr. Wu also demolishes the contention that the gifts were the result of undue influence on the part of the defendant. Although he was acting for both the donor and the donee, nevertheless he carefully explained to the deceased the contents of the transfer documents; explained to the deceased her financial position and even suggested to her on April 13, 1977 that she should consider very carefully whether she ought to give the Hong Kong shares away in view of the fact that her inheritance would extract estate duty. The very factors set out by the authorities were clearly satisfied by Mr. Wu's careful explanations to the donor before the gifts were made. The fact that the donor acted on the advice of Mr. Wu in not giving the Hong Kong shares straightaway indicates that she had given thought to her own financial position and was not being induced or influenced into making a gift by reason of the influence exerted by the defendant and his wife during the deceased's stay in their house. The fact that it took her about a month to decide to give the Hong Kong shares as well reinforces this view. It is also to be noted that Mr. Wu again discussed with the donor her financial position and satisfied himself not only that she knew what she was doing but that she knew her financial position and that she wanted the gift to be made.

It was submitted on behalf of the plaintiffs that Mr. Wu was acting for both the donor and the donee; that he was therefore not independent; that the deceased did not receive any independent legal advice and that the evidence of Mr. Wu was therefore insufficient to negative the presumption of undue influence. Counsel cited the following passage from the judgment of Farwell J. in *Powell* v. *Powell*[4]:

"In my judgment, the donee does not discharge this burden by showing that his own solicitor acted for both parties. A solicitor who accepts such a post puts himself in a false position; if he acts for both, he owes a duty to both, to do the best that he can for both. But the court requires that the donor should be placed in as good a position as if he

were in fact emancipated. The solicitor, therefore must be independent of the donee in fact, and not merely in name and this he cannot be if he is solicitor for both. Again, his duty is to protect the donor against himself, and not merely against the personal influence of the donee in the particular transaction."

Powell v. *Powell* was decided 80 years ago. Since then the question of independent legal advice has been raised and considered in three Privy Council cases. In *Mt. Farid-un-nisa* v. *Munshi Mukhtar Ahmad & Anor.*,[5] Lord Sumner in dealing with this point said:

"The case of an illiterate *purdahnashin* lady, denuding herself of a large portion of her property without professional or independent advice is one on which there is much authority. Independent legal advice is not in itself essential *(Kali Buksh Singh's case)*. After all, advice, if given, might have been bad advice, or the settlor might have insisted on disregarding it. The real point is, that the disposition made must be substantially understood and must really be the mental act, as its execution is the physical act, of the person who makes it *(Wajid Khan's* case, *Sunitabala Debi's* case)."

Again, in *Valluri Ramanamma* v. *Marina Viranna*,[6] the Privy Council again held that independent legal advice is not in itself essential. Sir George Lowndes in delivering the judgment of the Judicial Committee observed, at page 104:

"It is for the person claiming the benefit of any such disposition to establish affirmatively that it was substantially understood by the lady and was really her free and intelligent act. If she is illiterate, it must have been read over to her: if the terms are intricate they must have been adequately explained, and her degree of intelligence will be a material factor; but independent legal advice is not in itself essential: see *per Lord Sumner in Farid-un-nisa* v. *Mukhtar Ahmad*."

In *Inche Noriah's* case, *supra*, the question was discussed whether the presumption can be rebutted in any other way than by proof of independent legal advice and also as to what constituted sufficient independent legal advice. Their Lordships were not prepared to accept the view that independent legal advice is the only way in which the presumption can be rebutted; and they were not prepared to affirm that legal advice, when given, does not rebut the presumption, unless it be shown that the advice was taken. They held that it was necessary for the donee to prove that the gift was the result of the free exercise of the independent will of the donor. It was pointed out that the most obvious way to prove the abovementioned fact is by establishing that the gift was made after the nature and effect of the transaction had been fully explained to the donor by some independent and qualified person so completely as to satisfy the court that the donor was acting independently of any influence from the donee and with the full appreciation of what he was going, and in many cases where there are no other circumstances this may be the only means by which the donee can rebut the presumption. The fact, however, to be established, said their Lordships, was that which has been already stated, and if evidence is given of circumstances sufficient to establish that fact they saw no reason for disregarding them merely because they do not include the advice from a lawyer. They refused to lay down what advice must be received in order to satisfy the rule where independent legal advice is relied on further than to say that it must be given with a knowledge on the part of the adviser of all relevant circumstances and must be such as a competent and honest adviser would give if acting solely in the interest of the donor.

It is clear from these Privy Council decisions, which are binding on this court, that independent legal advice is not essential to rebut the presumption of undue influence. What is necessary is to establish affirmatively that the gift was the "free and intelligent" act of the donor.

There was another important factor in this case. Unlike other cases in which gifts were sought to be set aside upon the death of the donor, I had in this case the advantage of seeing both the donor and the donee in the witness box and hearing their evidence. Although the deceased was 82 years old and not educated, she did not betray any sign of mental weakness. She impressed me as an intelligent, astute and strong-willed woman. For example, she had given the property at 26 Siglap Road to her son Philip against the wishes of her husband. The deceased's own physician, Mr. Wong, who had treated her for some six years, stated that "she was a very independent and determined woman" and Mr. Wu pointed out that "the deceased was despite her age a strong-willed person". I did not accept the evidence of the deceased because she had patently given false evidence. I accepted unreservedly the evidence of the defendant because in my judgment he was speaking the truth.

Finally, the best evidence in this case came from the mouth of the deceased. She made it clear in cross-examination that the only reason why she wanted the shares back was that she was unhappy with the defendant because when she fell ill in 1978 and was admitted into hospital he did not visit her. She stated that she wanted to punish him for not visiting her in hospital and she went on to say that had he visited her in hospital she would not want her shares back. If ever there was a clear indication that she had intended the gifts and only changed her mind later because of a frivolous reason, it is in this passage of her evidence.

Applying the principles laid down in *Inche Noriah's* case and considering all the surrounding circumstances and in particular the evidence of Mr. Wu, I had no hesitation in coming to the conclusion that the deceased was fully aware of the true nature of the two impugned transactions; that she signed the Transfer Deeds well knowing the contents thereof; that the contents were read out and explained to her in her own language; that she understood everything that was said to her at that time and that she signed the Transfer Deeds of her own free will fully intending to gift the shares in question to the defendant. I had no doubt at all that the two gifts to the defendant were the result of the free exercise of the deceased's independent will. In my judgment the defendant had established affirmatively that the gifts were the "free and intelligent" acts of the deceased.

It was for these reasons that the claim of the plaintiffs was dismissed with costs.

Claim dismissed.

Solicitors: *Y.M. Jumabhoy & Co.; Murphy & Dunbar.*